

REMARKS

The Rejection Under 35 USC § 112

This rejection is moot in view of the cancellation of claim 3 without prejudice or disclaimer.

The Rejection Under 35 USC § 102

The Office Action rejects claims 1-5 and 8-11 as allegedly anticipated by Sutton (US 6,737,022). The Office Action relies on the embodiment disclosed in Figure 12.

Sutton in Figure 12 (and also in all other embodiments) does not disclose any sampling device having a suction line. The Office Action alleges that element 250 in Sutton is a suction line. Element 250 is taught to be a compressed gas distributor. To further clarify claim 1, said claim was amended to require that the suction line (9) be connected to a vacuum source. The presence of a vacuum source connected to line (9), and as a matter of fact to any line, is not taught or even suggested by Sutton.

Claim 2, 4 and 6 are rewritten in independent form and these claims do not require the presence of a vacuum line connected to line (9). However, the elements of these claims at least are clearly not taught or even suggested by Sutton.

For claim 2, Sutton does not disclose a housing (6) having an outlet aperture (14) for substances (13) exiting from the exit aperture (4) and having a passage aperture (8) for the suction line (9) is arranged around the exit aperture (4). There is only one single aperture, i.e., outlet 244, in Sutton for the substance exiting. Compare this to elements (4) and (14) of the present claims. See also the figure in the present application.

For claim 4, Sutton does not disclose a suction line (9) which runs into a collecting vessel (10), which is connected via a valve (11) to a vacuum line (12). The Office Action alleges that Sutton discloses that the suction line (250) further runs in a collective vessel/sample vial; however, this allegation is incorrect. Element 250 is not a suction line, and there is no collective vessel/sample vial disclosed in Figure 12 or in the description thereof. Furthermore in Sutton there is no reason for connecting any of the disclosed conduits for pressurized gas to a vessel, as the pressurized gas will prevent any sample fluid to enter the corresponding conduit and to reach such a vessel.

Not only does Sutton lack an explicit disclosure of the claimed invention herein, it also does not provide a reason to one of ordinary skill in the art to modify a sampling device described therein into a sampling device according to the present application.

Claim 8 is amended to further clarify that it requires the presence of a protective-gas maintained in the region of the exit aperture. The maintained protective-gas is a physical material and is in combination with the rest of the apparatus and is thus not a method limitation.

The Rejection Under 35 USC § 103

Claims 6 and 7 are rejected as allegedly unpatentable over Sutton.

The Office Action admits that Sutton fails to teach a heating device in the region of the exit aperture and alleges that it would have been obvious to provide heat in the region of the exit aperture to achieve the predictable results of obtaining the desired temperature conditions for mixing and proper chemical analysis.

The Office Action appears to refer to a heating device within the microreaction system that allows heating of the sample to be processed, but such is in no spatial or functional correlation to the exit aperture.

The Office Action then alleges that it would have been obvious to provide an electric heating device or heat coupling in the region of the exit aperture to achieve the predictable results of obtaining the desired temperature conditions for mixing and proper chemical analysis.

This allegation is flawed in that there is no reasonable objective present in Sutton for arranging any heating means close to the exit aperture. Also, there is no explanation of what predictable results would be achieved.

Because, the sample fluid exits the microreaction system via the exit aperture usually within a very limited time span, no further mixing or chemical analysis can be controlled or enhanced by heating the exit aperture.

Contrary to such allegations it is explained in page 6, first paragraph, of the present application that there might be ice formation at the exit aperture due to readily volatile solvents during exit. Such possible ice formation is not discussed by Sutton (and thus no reason is provided therein for providing measures to prevent the same) and is in no relation whatsoever to heating the sample during the processing of said sample within the microreactor system.

Moreover, in most embodiments Sutton uses pressurized gas to expel a droplet from the supply conduit, which one would expect to prevent any ice formation by the gas flow and applied pressure. Thus, one of ordinary skill in the art would not find a reason to provide

additional heating at the region of the exit aperture in the system of Sutton.

Reconsideration is respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,
/Csaba Henter/

Csaba Henter, Reg. No. 50,908
Attorney for Applicants

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1
2200 Clarendon Boulevard, Suite 1400
Arlington, VA 22201
Direct Dial: 703-812-5331
Facsimile: 703-243-6410
Attorney Docket No.:MERCK-3103

Date: February 5, 2009

K:\Merck\3000 - 3999\3103\Reply Feb 09.doc